

In the United States Court of Federal Claims

No. 18-1784C
(March 23, 2020)

ROBERT J. LABONTE, JR.,

Plaintiff,

v.

UNITED STATES,

Defendant.

ORDER

On December 3, 2019, the Court dismissed all but one of the plaintiff's claims and remanded the remaining claims to the Army Board for Correction of Military Records ("ABCMR") (ECF 57). The ABCMR was directed to obtain a new medical opinion that complies with the law and then reevaluate the plaintiff's remaining claim in light of that medical opinion. The Court ordered the ABCMR to complete its review within 120 days, or by March 26, 2020, and the parties to file a Joint Status Report by April 9, 2020.

On March 20, 2020, the defendant moved for an extension of time to complete the new medical opinion and allow the ABCMR to evaluate the plaintiff's claim in light of that opinion (ECF 62). The plaintiff opposes the defendant's motion (ECF 63).

The defendant has not explained why additional time is necessary to complete the tasks ordered on remand. The case was narrowed considerably by the Court's order, and the plaintiff's medical records and claims were familiar to Army doctors and the ABCMR. The defendant provides no satisfactory explanation why it has been unable to complete its review and reconsideration in the time allotted.

Denying the defendant's motion, however, will avail the plaintiff and the Court nothing. The Court's role is to review decisions of the ABCMR. The Court is dependent on the ABCMR to fulfill its responsibilities and provide a decision the Court can review. In the absence of a decision, there is nothing the Court can do at this stage to force the completion by the ABCMR of the task assigned to it.

The defendant's request for an additional 71 days is unreasonable in light of the narrow scope of the remand and the ABCMR's familiarity with the case based on its previous review of

the claims, now cut back to one. The Court is not prepared to allow additional time due to the onset of the coronavirus pandemic and attendant disruptions. The defendant had several months before the dislocations connected with the pandemic to move the matter forward.

The Court **GRANTS** in part the defendant's motion. The ABCMR will complete its review of the plaintiff's remaining claim by **May 1, 2020**. The parties will submit a Joint Status Report by **May 8, 2020**. No further extensions of time will be granted, and the failure to meet this deadline by the defendant may result in appropriate sanctions.

The Clerk of Court is directed to serve a certified copy of this order on the Army Review Boards Agency, Army Board for Correction of Military Records, 251 18th Street South, Suite 385, Arlington, Virginia 22202-3531.

It is so **ORDERED**.

s/ Richard A. Hertling

Richard A. Hertling

Judge